

TEMPORARY EASEMENT AGREEMENT GSA AUBURN WAREHOUSE COMPLEX

THIS TEMPORARY EASEMENT AGREEMENT ("**Agreement**") is made and entered into as of this 19th day of September, 2014, by and between the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services and authorized representatives ("**GSA**" or "**Grantor**"), under and pursuant to the powers and authorities contained in 40 U.S.C. § 1314, and THE BOEING COMPANY ("**Grantee**"). Grantor and Grantee are sometimes hereinafter referred to collectively as the "**Parties**" and each individually as a "**Party**."

RECITALS

A. Grantor is the owner in fee simple of certain real property improved with the Auburn Warehouse Complex Center located at 400 15th Street S.W., Auburn, WA 98001-6599 ("**Grantor's Property**"), which property is more particularly described in the attached legal description marked Exhibit A and incorporated herein by reference.

B. Grantee is the owner of the adjacent Boeing Auburn Fabrication Plant ("**Boeing Auburn**") and intends to install, inspect, repair, alter, modify, replace, remove, monitor, maintain, and sample groundwater test wells on Grantor's Property (the "**Wells**" and each individually a "**Well**") for the purpose of evaluating potential environmental water quality impacts originating from Boeing Auburn.

C. To facilitate installation, monitoring, maintenance, and sampling of the Wells, Grantee requires a temporary easement from Grantor.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties acknowledge that the foregoing Recitals are true and correct.

2. **Temporary Easement.** Subject to the terms and conditions set forth in this Agreement, Grantor does hereby grant and establish in favor of Grantee, its employees, agents, successors, and assigns, a temporary and exclusive easement on Grantor's Property in the proposed locations as shown on the attached map marked Exhibit A-1 and incorporated herein by reference, for the sole purpose of Grantee installing, inspecting, repairing, altering, modifying, replacing, removing, monitoring, maintaining, and sampling the Wells to detect groundwater environmental contamination (the "**Easement**"). The Well locations are restricted to the areas and sites as depicted in Exhibit A-1. Any other areas or additional Well locations will require the prior written approval of Grantor.

3. **Use of Easement Areas.** Grantee will have use of the Easement for the purpose described in paragraph 2, above; provided, however, that Grantee may not install any device without the presence of Grantor's representative and obtaining the prior written concurrence of Grantor's representative as to the time, place and method being used for the installation, unless Grantor agrees, in writing, to other arrangements. Grantor may refuse to allow Grantee to install any device if, in Grantor's sole judgment, the installation could cause damage to Grantor's Property, disrupt official government business or interfere with the use of Grantor's Property by building occupants or the public. Grantor also retains the right to remove any device or to require Grantee to remove any device if, in Grantor's sole judgment, the device is damaging Grantor's Property, disrupting official government business or interfering with the use of Grantor's Property by building occupants or the public. All work must be scheduled with Grantor's Property Manager between 7 a.m. and 5 p.m. on business days of the Federal Government, unless Grantor agrees, in writing, to other arrangements. Grantee must provide Grantor with a written schedule at least five business days prior to the initial installation of the Wells.

4. Installation. Grantee represents that the Wells will be installed to depths between 30 and 60 feet below the ground surface and will be constructed of 2-inch PVC pipe and completed with a flush-mount steel monument set in concrete according to State of Washington well regulations [Washington Administrative Code (“WAC”) 173-160]. The Well monuments are traffic-rated and will not impede site operations on Grantor's Property. Grantee will provide Grantor with all Well installation logs, reports and data collected from the Wells. The Well installations will require Grantee vehicle access to Grantor's Property. Vehicles will include a drill rig, forklift and support trucks. Installation of the Wells is expected to take two to three days to complete. Grantee will coordinate with Grantor during installation of the Wells, as described in greater detail in paragraph 3, above, to minimize interference with the use of Grantor's Property. Grantee will remove soil and water generated during drilling from Grantor's Property the same day it is generated. Grantor's Property will be left clean at the end of each day. All work will be conducted in compliance with a health and safety plan (the “Plan”) approved by the State of Washington Department of Ecology (“DOE”). Grantee will provide a copy of the DOE-approved Plan for Grantor's review within 30 days of the signing of this Agreement. Grantor will timely review the Plan and reserves the right to require Grantee to make changes to the Plan, but only to the extent that the Plan is not consistent with the terms and conditions of this Agreement and Grantor provides notice of such proposed changes within 10 business days of receipt of the Plan. Development of the Wells (*i.e.*, initial cleaning and pumping) will be conducted three to seven days after Well installation. Well development uses minimal equipment and will not disrupt site operations. Well development will be conducted according to State of Washington well regulations (WAC 173-160) and likely will require one day to complete. Grantee will drum and remove water generated during Well development from Grantor's Property the same day it is generated.

5. Monitoring. Grantee must provide to Grantor a written schedule of the plans for periodic monitoring visits at least 10 business days prior to the first such visit. Grantee must make prior arrangements with Grantor's Property Manager or designated representative for access to Grantor's Property for monitoring of the Wells. Grantor

may refuse access at any time if, in Grantor's Property Manager's sole judgment, access could cause damage to Grantor's Property, disrupt official government business or interfere with the use of Grantor's Property by building occupants or the public. Grantee represents that, to detect any groundwater contamination, monitoring points will be sampled by survey technicians using equipment temporarily positioned on the Wells. The Wells will be sampled for volatile organic compounds, including trichloroethylene. Other compounds and elements, including nitrate, sulfate, iron, and total organic carbon, also may be sampled. Sampling takes about 30 to 45 minutes for each Well and requires hooking a small pump to dedicated tubing in the Well. Grantee will contain and remove any excess water generated during sampling the same day it is generated.

6. Monitoring Program and Delivery of Data to Grantor. Grantee will implement, at its sole cost and expense, a monitoring and data collection program to assess the environmental water quality impacts to Grantor's Property originating from Boeing Auburn commencing as of the date the drilling and installation of the Wells is completed and continuing for a minimum period of five years thereafter, unless this Agreement is terminated in accordance with paragraph 22, below. Grantee will conduct Well sampling no less frequently than on a quarterly basis for at least one year from the date of installation of each Well. Sampling frequency after the first year will be at the discretion of DOE. The first sampling event will occur approximately one to two weeks after Well installation and Well development. Grantee expects that monitoring may be required for up to 15 years, but may be required for as little as 5 years, depending on the results of the groundwater sampling. All data collected and associated laboratory results from the Wells sampling will be delivered to Grantor, at no cost to Grantor, on the same day that it is available to Grantee. In addition, quarterly or annual reports that are generated by Grantee must be provided promptly to Grantor, at no cost to Grantor.

7. Additional Test Wells and Further Investigation. If contamination originating from Boeing Auburn is detected above DOE standards on Grantor's Property, provided Grantee obtains Grantor's prior written consent, Grantee may install

additional Wells, and conduct further investigation as required by DOE to determine the extent of the contamination on Grantor's Property. If it becomes necessary to install additional Wells beyond those depicted in Exhibit A-1, the Parties will revise Exhibit A-1 accordingly.

8. Remediation. Grantee must develop an action plan, at Grantee's sole cost and expense and to Grantor's reasonable satisfaction, for control or removal of contamination discovered on Grantor's Property originating from Boeing Auburn. Grantee acknowledges that there is a potential for contamination from Boeing Auburn to be found on Grantor's Property. If such contamination is found, it will be evaluated under the existing DOE Administrative Order titled "In the Matter of Remedial Action by: The Boeing Company and AMB Property Corporation (AO-12/19/05), as such Administrative Order may be amended from time to time, and, if remediation is required by DOE, Grantee will perform such measures. Grantee must address such contamination discovered on Grantor's Property at Grantee's sole cost and expense. Grantee agrees to complete any remedial or other corrective action affecting Grantor's Property to the extent required by Federal, State and local law, and will coordinate all activities with Grantor as to time, place and manner.

9. Term. The Agreement and Easement will begin on the Effective Date, defined in paragraph 28, below, and will terminate on the date that Grantee provides written notice that the Easement is no longer required, but in no event later than 15 years from the Effective Date. If DOE determines that additional monitoring time is required beyond the initial 15-year term, the Parties will negotiate a new agreement.

10. National or Local Emergency. Grantee agrees to follow any direction or order given to Grantee by any Federal agency or Grantor in the case of a national or local emergency that requires such direction be given.

11. Repairs and Damages. Grantee acknowledges that its proposed activities constitute a potential risk to Grantor's Property. If any damage occurs as a result of

Grantee's exercise of its rights under this Agreement, Grantee will be solely responsible to pay for such damage to Grantor's Property arising out of or related to the activities of Grantee, or its employees, agents, contractors, and subcontractors on Grantor's Property. In the event Grantee damages Grantor's Property, at Grantor's sole discretion, Grantee must repair Grantor's Property and restore it to substantially the same condition prior to such damage. Any repairs performed by or on behalf of Grantee or its agents must adhere to and be consistent with Federal and Grantor standards. In the alternative, and only if mutually agreed to by the Parties, Grantor may elect to repair any damage and restore it to substantially the same condition prior to such damage and hold Grantee responsible for any reasonable costs and expenses that Grantor incurs to repair the damage. If Grantor directs Grantee to repair the damage, Grantee must use a contractor or contractors approved in advance by Grantor, which approval will not be unreasonably withheld, conditioned or delayed. Grantee must immediately suspend work at the direction of Grantor if any work or device causes damage to Grantor's Property. Grantor also will have available all legal and equitable remedies to enforce Grantee's obligations hereunder in the event of an uncured violation.

12. Maintenance and Restoration. Grantee must restore Grantor's Property to substantially the same condition prior to the commencement of this Agreement within 30 days of Grantor giving notice to do so. Grantee assumes liability for the maintenance and decommissioning of the Wells, except to the extent Grantor retains the Wells pursuant to paragraph 20, below, in which case Grantor will assume liability for the maintenance and decommissioning of such retained Wells from that time forward. This provision will survive termination or earlier expiration of the Agreement.

13. Liens. Grantee will use its best efforts to ensure that no mechanics, materialmen or other liens are filed against Grantor's Property as a result of the exercise of Grantee's rights under this Agreement, and Grantee will cause any such mechanics, materialmen or other liens to be promptly released or bonded over. Grantee must obtain full and irrevocable lien releases (if legally available) from all

contractors and subcontractors for work performed, or to be performed, on Grantor's Property by or on behalf of Grantee or its agents and deliver such releases to Grantor prior to entry, and, from time to time, at Grantor's request, Grantee must obtain further assurances and releases and deliver same to Grantor.

14. Indemnification. Except as set forth in paragraphs 12 and 20 with respect to retained Wells, Grantee hereby agrees to indemnify and hold harmless Grantor, its employees, officers, representatives, and agents, in both their individual and official capacities, from and against any and all claims, demands, causes of action, suits, legal or administrative proceedings (whether arising in contract, tort, strict liability, or of common law or statutory derivation), costs, liabilities, fines, cures, penalties, losses, or expenses (including attorney's fees and expenses and court costs), and damages to person or property ("**Liability**") to the extent such Liability arises out of or relates to the exercise of the rights granted under this Agreement to Grantee, or Grantee's employees, agents, contractors, subcontractors, and invitees, or are related to Grantee's use of the Easement, or any other act or omission of Grantee, its employees, agents, contractors, subcontractors, and invitees on Grantor's Property, unless and except to the extent the same arises out of or relates to the acts or omissions of Grantor, its employees, officers, representatives, agents, contractors, subcontractors, or invitees. Grantee's obligations under this paragraph 14 will survive for a period of five years following the expiration or earlier termination of this Agreement, and will continue to apply following such fifth year with respect to any claim for defense, for indemnification or to be held harmless under this paragraph, notice of which was given to Grantee within such five-year period. Grantee's indemnification obligation under this paragraph is conditioned upon: (a) Grantor giving Grantee timely notice of any claim, or any circumstances that may give rise to a claim, under the foregoing indemnity; (b) Grantee having the opportunity to defend or settle any claim covered by the foregoing indemnity; and (c) Grantor cooperating fully in any such defense or settlement.

15. Insurance. Grantee must maintain, or cause its contractors, consultants, advisors, agents, and authorized representatives to maintain, comprehensive general public liability and property damage insurance policies to cover claims arising out of or related to Grantee's activities under this Agreement that cause damage to persons or property, in amounts of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, and a contractor's pollution legal liability policy in the amount of at least \$1,000,000 per claim, except to the extent of Liability arising out of or related to the acts or omissions of Grantor, its employees, officers, representatives, agents, contractors, subcontractors, or invitees; such insurance must name Grantor as an additional insured. Before commencing any activities under this Agreement, Grantee must deliver to Grantor evidence that Grantee or Grantee's contractors, consultants, advisors, agents, and authorized representatives, have the required insurance coverage. Each contractor also must obtain and maintain worker's compensation insurance in the amounts required by the State of Washington.

16. Compliance with Laws. Grantee must comply with all applicable Federal, State, municipal, and local laws, and the rules, orders, regulations, and requirements of the Federal Government, including any waste handling and disposal requirements. Grantee must comply with any laws, regulations, instructions communicated to Boeing, or orders affecting the activity hereby authorized if and when issued by the U.S. Environmental Protection Agency ("EPA"), or any other Federal, State, interstate, or local governmental agency having jurisdiction over the abatement or prevention of pollution. Such regulations in effect or prescribed by EPA or any other Federal, State, interstate, or local governmental agency are hereby incorporated into and made a condition of this Agreement.

17. Permits and Disposal. Grantee is solely responsible, at its sole cost and expense, for obtaining all necessary permits, licenses and approvals required by any governmental authority or agency, including those relating to waste handling and disposal. The disposal of any toxic or hazardous materials on Grantor's Property is strictly prohibited. Grantee must not discharge waste or effluent from or on Grantor's

Property. Grantee must use all reasonable means available to protect the environment and natural resources, and, where damage nonetheless occurs arising from Grantee's activities, Grantee will be liable to Grantor to restore the damaged resources. It is understood by both Parties that the granting of this Easement does not eliminate the necessity of obtaining any permit or license that may be required by any Federal, State or local statute or regulation in connection with Grantee's exercise of rights granted under this Agreement.

18. Health and Safety Requirements. Grantee and its agents, contractors and subcontractors must comply with all applicable GSA policies and health and safety requirements, provided Grantor notifies Grantee of such requirements. Grantor and Grantee must meet prior to the commencement of any activities under this Agreement for the purpose of Grantor apprising Grantee of the applicable policies and health and safety requirements; provided, however, that Grantee hereby waives any and all claims against Grantor for Grantor's failure to meet or for any inaccurate, incomplete or omitted disclosure with respect to such policies and health and safety requirements.

19. No Cost or Expense to Grantor and List of Wells. Any work related to the Wells and monitoring type devices placed on Grantor's Property must be accomplished without cost or expense to Grantor under the general supervision and subject to the approval of the building manager having immediate jurisdiction over Grantor's Property, and in such manner as not to endanger personnel or property of the United States. Grantee must transmit a list to Grantor of all Wells, including location, within 30 days of installation. Grantor is not responsible for any damage to, or removal of the Wells, except as otherwise provided in paragraphs 12 and 20.

20. Removal. At or before the expiration or earlier termination of this Agreement, Grantee must give written notice to Grantor of its intent to remove or decommission, in accordance with DOE requirements, all Wells described herein, and restore Grantor's Property to the satisfaction of Grantor. Grantor will have the right to retain any or all Wells in an active state, at its sole election, such election to be

provided, in writing, to Grantee within 30 days of Grantor receiving Grantee's written notification. If Grantor elects to retain the Wells, (a) the Wells will become the property of the United States without compensation to Grantee, (b) Grantee will have no further obligations with respect to the retained Wells, (c) Grantee will have no claim for damages or Liability against Grantor, its officers or agents for such action, and (d) Grantor will have no claim for damages or Liability against Grantee, its officers or agents associated with such retained Wells, except as otherwise provided herein. If Grantor does not elect to retain the Wells, in the event Grantee fails to remove the Wells and restore Grantor's Property, Grantor will have the option to take over the Wells without compensation to Grantee, or to remove the Wells and perform the restoration at the sole cost and expense of Grantee, and Grantee will have no claim for damages or Liability against Grantor or its officers or agents for such action.

21. Notice. All correspondence and notices to be given pursuant to this Agreement must be addressed as follows:

Grantor:	The United States of America
Mailing Address:	U.S. General Services Administration (GSA) Public Buildings Service Northwest Arctic Region (10LDA) 400 15 th Street S.W. Auburn, WA 98001 Attention: Bob Bliss

Grantee: The Boeing Company

Mailing Address: Manager, Environmental Remediation
The Boeing Company
P.O. Box 3707
MC 9U4-26
Seattle, WA 98124
Attention: James N. Bet

Either Party may change its mailing address at any time by giving notice of such change to the other Party in the manner provided herein at least 10 days prior to the date such change is effected. Notice will be deemed to have been duly given if and when enclosed in a properly sealed envelope, addressed and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

22. Termination. This Agreement will terminate on the date that Grantee provides written notice that the Easement is no longer required, but, in no event, no later than 15 years from the Effective Date. Grantor reserves the right to terminate this Agreement, in whole or in part, if there has been:

- a. A failure to comply with any term or condition of this Agreement; or
- b. A non-use of the Easement for a consecutive two-year period for the purpose for which granted, unless Grantee requests an extension, which request will not be unreasonably denied; or
- c. An abandonment of the Easement.

Grantor will not terminate this Agreement, in whole or in part, without giving Grantee 30 days' advance written notice of its intent to terminate. The termination will be effective as of the 30th day following date of the notice.

23. **Days.** Unless otherwise specified, all references to "**days**" mean calendar days. Business days exclude Saturdays, Sundays and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday or legal public holiday, the date for performance will be the next following regular business day.

24. **Attorney's Fees and Costs.** In the event that either Party is required to bring any action to enforce any of the provisions of this Agreement, or is required to defend any action brought by the other Party with respect to this Agreement, each Party will be solely responsible for the payment of its own legal expenses, including attorney's fees and costs.

25. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which so executed and delivered will be deemed an original, but all of which together will constitute but one and the same instrument.

26. **Severability of Provisions.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance is to any extent invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant or condition to any other person or circumstance will not be affected thereby, and each such term, covenant and condition will be valid and enforceable to the fullest extent permitted by law.

27. **Entire Agreement.** This Agreement contains and embodies the entire agreement between the Parties with respect to the matters contained herein and is governed by the Federal laws of the United States of America, and, if such laws are not applicable to the issue in question, then the Agreement will be governed by the laws of the State of Washington. Execution, delivery and performance under this Agreement has been duly authorized by all necessary actions of the Parties hereto. No modification of this Agreement or any provisions hereof will be effective unless reduced to writing and such document is signed by duly authorized representatives of the Parties and delivered to the other Party in accordance with the notice provisions of paragraph

21, above. No waiver of any right or obligation hereunder will be effective unless reduced to writing and signed by a duly authorized representative of the Parties subject to such right or obligation.

28. **Effective Date.** This Agreement will become effective as of the latest of the dates of execution of all signatories set forth below (the "**Effective Date**"), and the Effective Date of this Agreement will be inserted on page 1 hereof.


*[Remainder of Page Intentionally Left Blank.
Signatures on Following Pages.]*

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services and authorized representatives, has caused this Temporary Easement Agreement GSA Auburn Warehouse Complex to be signed by Norman Dong, its Commissioner of Public Buildings, and attested to by Ben Bravilias, its SPECIAL ASST., on this 19th day of September, 2014, and hereby acknowledges that the execution and delivery of this Temporary Easement Agreement GSA Auburn Warehouse Complex are the act and deed of the UNITED STATES OF AMERICA.

ATTEST:

UNITED STATES OF AMERICA,
acting by and through the
ADMINISTRATOR OF GENERAL SERVICES
and authorized representatives

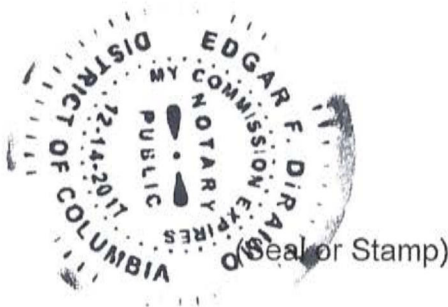
By: _____


Norman Dong
Commissioner
Public Buildings Service

TO WIT:

I, EDGAR F. DIRAIMO, a Notary Public in and for the District of Columbia, do hereby certify that Norman Dong, who is personally well known to me (or satisfactorily proven by the oath of credible witnesses or other evidence) to be the person named as the authorized representative of the U.S. General Services Administration in the foregoing Temporary Easement Agreement GSA Auburn Warehouse Complex bearing date as of the 19TH day of SEPT, 2014, and hereunto affixed, personally appeared before me in the aforesaid jurisdiction and, as authorized representative as aforesaid, and by virtue of the authority vested in him, acknowledged the execution and delivery of this Temporary Easement Agreement GSA Auburn Warehouse Complex as the act and deed of the UNITED STATES OF AMERICA.

Given under my hand and notarial seal this 19TH day of SEPTEMBER, 2014.



Edgar F. Diraimo
Signature
Notary Public in and for the
District of Columbia
My appointment expires 12/14/17

SEP 19 2014

EDGAR F. DIRAIMO
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires December 14, 2017

Reviewed for Legal Sufficiency:

By: *Elizabeth Kuyper*
Office of Regional Counsel
Northwest/Arctic Region
U.S. General Services Administration

9/15/14
Date

CERTIFICATE OF ACCEPTANCE

IN WITNESS WHEREOF, Grantee has executed this document as of the date and year last written below.

The Boeing Company
Environmental Remediation

By: Clifford E. Johnson

Name: Clifford E. Johnson

Title: Authorized Signatory

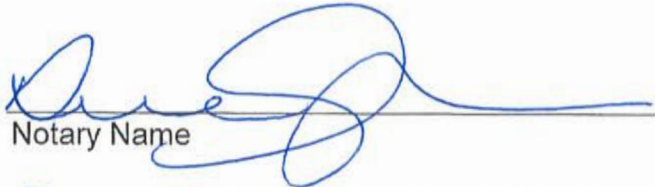
Date: 10/9/14

State of Washington)
)
County of King)

I certify that I know, or have satisfactory evidence, that Clifford E. Johnson is the person who appeared before me, and that said person acknowledged that he/she signed this instrument, and on oath stated that he/she was authorized to execute the instrument as the representative of the Boeing Company and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 9th day of October, 2014.




Notary Name

Denise A. Staack-Wagner
Print/Type Name

Notary Public in and for the
State of Washington,

residing at Redmond

My commission expires Sept. 02, 2016